



Goodfriend Government Affairs

August 31, 2016

Marlene Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

RE: Notice of *Ex Parte* Communication In the Matter of MB Docket No. 16-41  
Promoting the Availability of Diverse and Independent Sources of Video Programming

Dear Ms. Dortch:

This letter reports on a meeting held on August 31, 2016 with Counselor to the Chairman GiGi Sohn and Jessica Almond, Legal Advisor, Media, Public Safety, and Enforcement also from the Office of the Chairman. Representatives from Goodfriend Government Affairs included David Goodfriend, President, and DeVan Hankerson, Senior Director of Policy and Government Relations. The purpose of the meeting was to discuss a set of proposed questions to include in the upcoming Programming Diversity NPRM (please see attachment). The undersigned also e-mailed copies of the attached questions to David Grossman, Chief of Staff and Media Policy Advisor, Office of Commissioner Clyburn, Drema Johnson, Deputy Chief of Staff, Office of Commissioner Clyburn, Michelle Carey, Deputy Chief, Media Bureau and MaryBeth Murphy, Deputy Chief, Media Bureau.

With respect to the Programming Diversity Notice of Inquiry (“NOI”), the undersigned stated that independent programmers generally want to expand beyond the scope of ADM and MFN clauses to include issues more fundamental to the survival of independent programming generally. One of the key priorities for the Commission should be to establish the ultimate policy goals regarding independent programmers, including whether to maintain existing numbers of independent programmers and/or ensure greater programming diversity. The undersigned pointed out that within the last year, several independent programmers have ceased operation and others have reported greater difficulty obtaining financing given lenders’ doubts that independent programmers can survive in today’s consolidated pay-TV video market.

Incorporating the proposed questions, attached, would send a positive signal to the independent programmer community, and capital markets, that the Commission indeed has a real commitment to preserve and promote independent programming and true programming diversity in ownership and content.

Respectfully submitted,

/s/\_\_\_\_\_

***David Goodfriend***

cc:

GiGi Sohn, Counselor to the Chairman

Jessica Almond, Legal Advisor, Media, Public Safety, and Enforcement, Office of the Chairman

David Grossman, Chief of Staff and Media Policy Advisor, Office of Commissioner Clyburn

Drema Johnson, Deputy Chief of Staff, Office of Commissioner Clyburn

Michelle Carey, Deputy Chief, Media Bureau

MaryBeth Murphy, Deputy Chief, Media Bureau

Enclosures: 'Questions the Commission Should Ask in its Programming Diversity NPRM'

**Questions the Commission Should Ask in its  
Programming Diversity NPRM**

1. How should the Commission define “independent programmer?”
  - a. For purposes of our Program Access and Program Carriage rules, the Commission historically has defined “independent” to mean a programmer in which an MVPD does not have an attributable interest. This definition, however, would mean that programmers under common ownership with broadcasters (e.g., ESPN) or large media conglomerates (e.g., TNT) would be considered “independent programmers.”
  - b. Does the Commission’s current narrow definition make sense in today’s media market? Does it help to promote diversity? Would the Commission better target any rules designed to increase diversity in the media market by excluding from the definition of “independent programmer” any programmer under common ownership with a broadcast licensee, broadcast network, or video programming vendor over a certain revenue threshold or other benchmark?
2. Should the Commission’s “diversity” goals expressly include racial, ethnic, religious, gender, sexual identity, and/or other demographic characteristics?
  - a. Should such diversity goals apply to network ownership, content, or both? If so, is there evidence of actual or de facto discrimination against minority-owned and/or minority-oriented independent programmers that would justify an express set-aside?
  - b. Under current law, are there sufficiently impactful race-neutral mechanisms for achieving such diversity goals?
  - c. Under current law, do contemporary market conditions reflecting a relative paucity of ownership diversity justify remedial action by the Commission?
3. Would a channel set-aside and non-discrimination requirement serve to increase programming diversity?
  - a. Congress and the Commission historically have used set-aside requirements to foster programming diversity in highly concentrated video markets, such as the Direct Broadcast Satellite set-aside rule (4% of activated channel capacity used for noncommercial, educational channels) or the then-applicable “prime time access” and financial syndication (“fin syn”) rules.
  - b. Does the highly concentrated multichannel video programming market and relative paucity of small, independent programmers merit the establishment of an express channel set-aside for such programmers? If so, what would be an appropriate percentage of channel capacity? Would existing programming agreements, through their “force majeure” or other clauses, allow MVPDs to drop some non-independent programming services in order to meet an independent channel set-aside?
  - c. What non-discrimination principles would have to be included in such a set-aside rule in order to make the rule effective? Would set-aside channels have to be

made available on the most widely-penetrated programming tier, as is the case with the DBS set-aside? Would set-aside channels be subject to comparable rates, terms, and conditions? Would they appear on electronic program guides and programming search results in comparable fashion to other channels of the same genre? Would set-aside channels be accorded comparable treatment on an MVPD's proprietary OTT platform as that of non-independent programmers?

- d. Would a programmer have to meet a threshold measure of viability, such as financial support, executive experience, audience, or other metric, in order to qualify for a set-aside?